lants. Section 133 of the Ceylon Motor Car Ordinance of 1938 imposed liability on insurers directly towards injured persons. In March 1950 the respondent commenced action against the owner of the lorry. He also gave the appellants notice of the action as required under the Ordinance. In September 1951 he was awarded damages which were increased on appeal in May 1956. In January 1957 he obtained leave to levy execution. In September 1957 he commenced action against the appellants and obtained judgment. Shortly before the September 1951 judgment the Ordinance of 1938 was repealed and replaced by the Ceylon Motor-Traffic Act, 1951 which contained no transitional provisions designed to preserve rights or claims under the Ordinance of 1938, but section 6(3)(b) of the Ceylon Interpretation Ordinance of 1900 which is *in pari materia* to section 30(1)(b) of our Interpretation Act, 1967, preserved accrued rights. The appellants contended that the respondent could claim only by virtue of the statute, and, since the Ordinance of 1938 had been repealed, could found his claim only on the Act of 1951, which Act could not, on a fair construction of section 6(3)(b), cover it. It was held that by serving on the appellants of the notice of his claim, the respondent had on the date of the repeal "acquired a right" against the appellants within the meaning of section 6(3)(b) of the Interpretation Ordinance, although that right might fairly be called inchoate or contingent; and therefore the respondent's right was not affected by the repeal of the Ordinance of 1938.

We referred to those cases merely to illustrate how courts in different jurisdictions, with similar legislative provisions on the point, have approached problems of interpretation. The criteria adopted in those cases in the process of determining "accrued right" seem to be this. It must depend on the happening of an event which is specified in the statute. Now, section 2(a) of the Public Authorities Protection Act, 1948 enacted that action must commence within twelve months. That section was designed to govern the rights of persons desirous of asserting claims against public bodies or persons performing public duties, and it controlled also the rights of the public bodies or persons to the limited protection which it conferred upon them. Prospective plaintiffs and prospective defendants were alike bound. There can be no distinction in principle between a right given by law to commence an action and a defence given by law which bars an action. In respect of causes of action already existing before the operation of Act A252, therefore, both prospective plaintiffs and prospective defendants possessed accrued rights on the happening of the necessary event as specified in the old Act. The necessary event that had happened in the present case is this. On the failure of the respondents to commence action within the specified period the appellants had acquired an "accrued right" which was designed to give them immunity for acts done in the discharge of their public duties. That right was well preserved by the Interpretation Act, 1967.

The matter therefore resolves itself on the application of the law at the time the writ was issued. That that is the principle applicable in the instant appeal is well illustrated by the case of *J.S. Drinkhall* v. *Nam Hue Motor Hiring*[7] which was rightly referred to by the learned judge, but which he had found difficulty in applying. Unless the contrary is provided for, the law of limitation applicable to the suit is the law in force at the date when such suit was instituted, in the instant case, Act A252. But this principle is subject to the condition that the rights sought to be enforced have not already been barred under the previous law: see *Raman Kurup* v. *Chappan Nair.*[8] "A claim barred at the time when the writ is issued is not revived by a subsequent amendment of the law." (see *J.S. Drinkhall* v. *Nam Hue Motor Hiring, supra; Appasami Odayar* v. *Subramanya Odayar*[9]).

It therefore seems to us that in the circumstances of this case, the time for the claim was not enlarged by Act A252. The Act is not retroactive in operation, and has no application to a cause of action which was barred before the Act came into operation.

We would allow the appeal with costs here and below.

Appeal allowed.

Solicitors: *Rithaudeen & Aziz; K.C. Cheah & Co.*

CHAN KUM LOONG v. HII SUI ENG

[F.C. (Chang Min Tat F.J., Salleh Abas F.J. & Charles Ho J.) September 4 & December 6, 1979]

[Kuching — Federal Court Civil Appeal No. 110 of 1979]

Landlord and Tenant — Transfer of tenancy — Rent Controlled premises — Sarawak Rent Control Ordinance (Cap. 86), s. 15.

Practice and Procedure — Preliminary hearing on question of facts — Undesirable — Duty of counsel to court.

In this case the appellant was originally a sub-tenant of the premises. The respondent had agreed to accept the respondent as a tenant at an increased rental and subsequently there were negotiations for an agreement of lease. The respondent however claimed possession of the premises on the ground that the appellant was a trespasser. There had been an earlier action, where preliminary points were raised as to whether the respondent had consented to the subletting of the premises to the appellant and as to whether the appellant had accepted the respondent as chief tenant of the premises. The trial judge answered the first question in the affirmative and the second in the negative. In the second action the prayers and reliefs sought were the same. The learned trial judge gave judgment for the respondent. The appellants appealed.

Held: (1) once a tenant had entered on premises with the approval of the landlord, express or tacit, as for example by waiver from circumstances such as acceptance of rent after knowledge of subletting or assignment, then he cannot be dispossessed of the premises except in any of the circumstances set out in section 15 of the Rent Control Ordinance;

(2) on the facts in this case the respondent had consented to the appellant taking over the tenancy of the premises and therefore she was not entitled to retract and recover possession of the premises;

(3) it is undesirable to have a trial of preliminary issues of fact and counsel owe a plain duty to the court for it to function expeditiously, economically and satisfactorily.

Cases referred to:-

(1) *Tilling* v. *Whiteman* [1979] 2 W.L.R. 401.

(2) *Rajenback* v. *Mamon* [1955] 2 W.L.R. 21.

(3) *West Layton* v. *Ford* [1979] 3 W.L.R. 14 C.A.

FEDERAL COURT.

K. Thayalan (*Chew Pok Oi* with him) for the appellant.

K.C. Reddy for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J. (delivering the judgment of the Court): This is an appeal from the decision of the High Court at Kuching ordering the appellant to give up vacant possession of premises No. 29 Padungan Road Kuching to the respondent and to pay damages for trespass assessed at $600/- p.m. from March 1, 1976 to delivery of possession.

This order of the learned judge was given in Civil Suit No. K.512 of 1977 on April 21, 1979. Though it was stated in the order that this suit had come up for hearing and evidence was adduced, the appeal record included the pleadings in an earlier suit No. K.267 of 1976, in which the self same prayers and reliefs were sought.

By her statement in this earlier action, the respondent claimed possession on one ground and one ground only, namely, that the appellant was a trespasser. The statement of defence admitted the respondent's legal title to the premises but claimed that while previously from August 1, 1974 to December 31, 1974 he was the sub-tenant of Kwong Ing Co. Ltd. (the company) who was then the tenant of the premises holding the same of the then registered proprietors at a rent of $600/- p.m. under a registered sub-lease for 10 years from May 1, 1968 with a contractual right to renewal for a further but indeterminate term, the respondent had agreed to accept him as the new tenant at an increased rental of $700/- as from January 1, 1975. The respondent had then desired a further increase of the rent to $750/- and the appellant had agreed. To this intent, the respondent's solicitors had been instructed to prepare an agreement of lease which the appellant had signed but which remains unexecuted by the respondent. The defence claimed the protection of the Rent Control Ordinance Cap. 86 (Sarawak Laws) and finally contended that the notice to quit dated June 8, 1976 was bad in law.

It is clear that the prayers in the earlier action are precisely those obtained by the respondent in her later action. Yet no point was taken that the later action was totally unnecessary and ought to be rejected and dismissed out of hand for prolixity and abuse of the process of court. Any defect in the pleadings could have been cured by amendments, but no defect was shown and no application for any amendments was ever made. Despite the clear prolixity, evidence was led in the former action but it was said to decide a preliminary point of law before the trial of the action. At it turned out, it was not on any point of law at all. It was on two questions of fact, the first whether the respondent had consented impliedly to the sub-letting by the company to the appellant of the shop premises from August 1 to December 31, 1974 and the second whether she had accepted the respondent as chief tenant of the entire premises thereafter. The court answered the first question in the affirmative and the second in the negative.

This, of course, meant that the case would have to go on. In the ordinary course of events, a preliminary point of law which does not decide the matter between the parties one way or the other is an unjustified waste of time and occasions an equally unjustified increase in costs. Preliminary points of law have been described as too often treacherous short cuts and their price can be delay, anxiety and expense: see *Tilling* v. *Whiteman*[1] *per* Lord Wilberforce at page 403 D-G and per Lord Scarman at page 410 C-E. But where it is a trial of so-called preliminary issues of fact, the justification is even harder to see. This is more so, where the facts as found here on these two preliminary issues were not seen to be as they rightly are, the bases for the judgment that was delivered and the answers to the prayers sought by the respondent. For ourselves we have read the evidence that was led in the earlier action on these preliminary issues and have thought that it was sufficient to enable the whole action to proceed to a conclusion. This must be the reason why eventually after a delay and some anxiety, when the later action came up for trial (without the earlier action having been proceeded with), the parties agreed that this evidence should form part of the record. Only the respondent called further evidence from her husband who should have been called to give evidence in the preliminary issues since he was at all times the respondent's agent.

We think it should be said with some emphasis that counsel owe a plain duty to the court for it to function expeditiously, economically and satisfactorily. They must therefore so conduct their case as to enable the court to come to a quick and early decision. The court must also be chary of short-cuts and not be tempted to undertake any course except the one for a proper, expeditious and economical trial on the issues raised in the action.

Now, it is common ground that the premises come under the Rent Control Ordinance and it is well settled law that once a tenant has entered on the premises with the approval of the landlord, express or tacit, as for example by waiver from circumstances such as acceptance of rent after knowledge of the sub-letting or assignment, then he is not to be dispossessed of the premises except in any of the circumstances set out in section 15 of the Ordinance which permit or enable the landlord to obtain possession and exercise a right which is otherwise restricted by statute. That being so, the occupation of the appellant of the shop premises of No. 29 Padungan Road was protected and there was no justification under the Rent Control Ordinance to rule that a landlord could give a tenancy for a definite term: see *Rajenback* v. *Mamon.*[2] The appellant once let in as a tenant could continue to remain as a tenant even after the contractual term has expired. Judgment should have been given in his favour.

We do not however wish to labour this point, because of a more substantial ground.

The respondent acquired the premises subject to the registered sub-lease between her predecessors in title and the then tenant. There was no absolute prohibition against sub-letting in the sub-lease. On the other hand, there was a provision for assignment or sub-letting subject to consent. It is in clause 3 of the landlord's covenants and reads:

"Not to assign underlet or part with the possession of the demised premises or any part thereof without the previous written consent of the sub-lessors but such consent shall not be unreasonably or arbitrarily withheld by the sub-lessors."

This clause has not escaped comment in the High Court but regrettably, it was not considered in the light of the evidence adduced. The evidence was of a meeting between a representative of the company and Ngu Sai Kwong, the respondent's husband who handled the letting of the premises for her, and was her acknowledged agent. There were two others present. One was the respondent's rent-collector. The fourth was one Yap Sek Kai, a mediator.

The evidence of what was discussed and what was agreed to at this meeting is at variance, but the learned trial judge came to the finding that the respondent's husband had agreed to lease the shop-house to the appellant at the increased rental of $700/- per month to take effect from January 1, 1975. The evidence was overwhelming in favour of this finding.

He subsequently varied this finding by a qualification that this agreement was subject to the company paying the new rental. With respect, this qualification, even if founded on the evidence, is meaningless. The reason for the company giving up the premises was its inability to pay the rent. In any event, the rent after the sub-letting or assignment must be paid by the new tenant. The landlord could have no continued redress and could require none for any practical purpose from the tenant whom she had allowed to be replaced by another. Her only right against the company was for past arrears of rent or for previous breaches of the tenant's covenants. And the evidence was that the company was in difficulties over the payment of the rent and the appellant had been paying it until the action was commenced.

Whatever it was, there was at this meeting an agreement for the sub-lease to pass to the appellant effected by a duly appointed agent whose action must accordingly bind the respondent.

Further evidence in support of this finding could be found in the agreement of this new lease. It was prepared by a solicitor who was then acting for the respondent, and who was never at any time the solicitor for the appellant. Nevertheless, the respondent and her husband denied that they had instructed this particular solicitor to prepare this lease. There is however not the slightest suggestion that the solicitor also acted for the appellant. In the preparation of a lease, the practice is for the landlord's solicitors to prepare it. If the respondent and her husband denied any such instructions, it was for them to call the solicitor in question to deny such instructions, for the simple reason that only they could adduce such evidence from their confidential adviser and this was the best evidence available. As the learned judge noted, the solicitor was available and not called. What he did not do however was to resolve who should call him and to draw the adverse inference against the party who should have called him but did not. But perhaps there was not even any necessity for drawing this adverse inference against the respondent. Though the learned Judge did not consider it, the clearest evidence giving the lie to the suggestion, it was no more than this, advanced by the respondent that the new agreement for the lease to the appellant was not drawn up by her solicitor on her instructions but the appellant's, lies in the amount expressed as the rental. It was $750/-, $50/- more than the rental agreed verbally. We can conceive of no possible reason why the appellant should have an agreement drawn up whereby he made himself pay more than what he had bargained for. The instructions for the lease could therefore only come from the respondent and the fact was that she later refused to execute it not because the lease was a surprise to her but because of other reasons. She and her husband gave one reason — they now wanted the premises for themselves. It needs not be the only reason.

If the only reasonable inference from the evidence about this meeting and the drawing up of the lease, even though the respondent had subsequetly refused to execute it, is that it was drawn up on instructions given by the respondent through her husband, then the learned judge's finding that the respondent's husband had agreed to sublet the premises to the appellant is entirely sound but it is hardly compatible with his order to the appellant to give up possession of the premises to the respondent since on the pleadings such a decision could only be made on a finding that the appellant was a trespasser. But he did reach this conclusion that the appellant was at all times a trespasser and it is clear from his judgment that his reasoning was that the assignment was made in contravention of the clause against sub-letting. There was no waiver by the respondent of strict compliance, he said.

With great respect, it was well within the competence of the respondent to waive even an absolute condition against sub-letting and if she chose to do so, she could not rely on strict compliance therewith and certainly not with the provisions of a milder discretionary condition which she had by her agent's action before August 1974 and in December 1974 or January 1975 expressly waived. In the ordinary event, effect must be given to the provision that the respondent's consent was not to be unreasonably or arbitrarily withheld. As in anything, whether anything is unreasonable depends upon all the circumstances of the case and in the case of a normal letting which this is, the words of Lawton L.J. in *West Layton Ltd.* v. *Ford*[3] at page 23 are most apt that

"When during the period of the contractual tenancy a landlord is asked to consent to one tenant being replaced by another well able to pay the rent and likely to observe the covenants in the lease, in almost all cases it would be unreasonable for him to refuse his consent."

But, of course, factually, this is not a case whether the respondent landlord had withheld her consent unreasonably or arbitrarily and the court is asked to find that she had. It is a case that on the evidence she had consented and then retracted. This she should not, in all conscience, be allowed to do.

The appeal is allowed with costs here and in all the proceedings in the High Court. The order against the appellant to give up possession is set aside and he should be allowed to remain in possession at the rental of $600/- per month, without prejudice to any action, if any is open to him, to take for the determination of the standard rent.

Appeal allowed.

Solicitors: *Chan, Jugah, Wan Ullok & Co.; Reddy & Co.*